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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,478	03/23/2001	Donna B. Dulong	CRNI.125945	5342

46169 7590 03/29/2010

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EXAMINER	
SEREBOFF, NEAL	

ART UNIT	PAPER NUMBER
3626	

MAIL DATE	DELIVERY MODE
03/29/2010	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONNA B. DULONG, STEVEN R. WEHBA, DOUGLAS W. COMER, JOANNE S. STARK, MICHAEL A. KURTZ and BARBARA TROHIMOVICH

Appeal 2009-004024
Application 09/815,478
Technology Center 3600

Decided: March 29, 2010

Before MURRIEL E. CRAWFORD, ANTON W. FETTING and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-51. We have jurisdiction under 35 U.S.C. § 6(b).(2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a method for the prevention of errors in medication administration, and in particular, to a method, apparatus, system, and article of manufacture for providing medication administration warnings and comments. (Specification 1:17-19)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A computer programmed method for providing one or more medication administration comments for preventing medication administration errors, wherein the one or more medication administration comments are provided at a place of administration of a medication in a hospital setting, the method comprising:

accepting a medication administrator identification for a medication administrator;

accepting a patient identification for a patient;

displaying a graphical user interface listing one or more medications scheduled for administration to the patient;

accepting a user selection of one of the listed medications from the medication administrator, the selected medication corresponding with a medication to be administered to the patient by the medication administrator;

providing a data store having two or more compliance rules corresponding with the selected medication, the two or more compliance rules including at least a first compliance rule and a second compliance rule, wherein the first compliance rule includes a first condition and one or more first medication administration comments specific to the selected medication and the first condition, and wherein the second compliance rule includes a second condition and one or more second medication administration comments specific to the selected medication and the second condition;

determining that the first condition for the first compliance rule has been satisfied; and

displaying at the place of administration of the medication in a hospital setting, on a display device, the one or more first medication administration

comments associated with the first compliance rule when the first condition has been satisfied.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Lambert	US 6,529,892 B1	Mar. 4, 2003
Engelson	US 6,671,563 B1	Dec. 30, 2003

The following rejection is before us for review.

The Examiner rejected claims 1-51 under 35 U.S.C. § 103(a) as being unpatentable over Engelson in view of Lambert.

ISSUE

Have Appellants shown that the Examiner erred in rejecting claims 1-51 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Engelson in view of Lambert on the grounds that a person with ordinary skill in the art would know to use a second rule such as the product attributes of Lambert in the method of Engelson so that if a condition, such as two like-looking pills are at risk of being dispensed, then to display an alert and/or a comment/appropriate information on a video display attached to the patient's bedside.

PRINCIPLES OF LAW

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to

a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. The Specification describes that:

> A compliance rule is comprised of a medication, a condition, and a comment/warning text. Thus, zero or more compliance rules may be associated with any single medication. The condition(s) that trigger or invoke the display of the comment/warning may be based on a medication's brand name, generic name, sequence number, dosage form, or other property. Accordingly, when the user selects a particular medication at step 208, the associated condition of the medication may be satisfied thereby causing the system to display the associated comments or warnings step 212. For example, if a condition for a compliance rule is based on a certain generic name, when the medication having the generic name is selected at step 208, the associated comment/warning is displayed at step 212.
>
> (Specification 15: 12-21)

2. Engelson discloses that patient

> …data obtained then is analyzed by the medication administration management module 110 which records the therapeutic regimen information in the patient's MAR, and verifies that the right medication is being given to the right patient in the right dose by the right route and at the right time. If the medication administration management module 110 detects a discrepancy between the barcoded information printed on the patient bracelet 170 and the barcoded information on the label 180 affixed to the medication container 185, an alert is sounded and the appropriate information is displayed on the video display 84 attached to the bedside CPU 80. (Col. 13, ll. 49-60)

3. The Examiner found that:

> Lambert teaches two or more compliance rules corresponding with a selected medication, the two or more compliance rules including at least a first compliance rule and a second compliance rule, wherein the first compliance rule includes a first condition and one or more first medication administration comments specific to the selected medication and the first condition, and wherein the second compliance rule includes a second condition and one or more second medication administration comments specific to the selected medication and the second condition (see column 3, lines 55 column 4, lines 9 and column 5, line 51 - column 6, line 8). (Answer 4)

4. Lambert discloses using the drug name and product attributes as rules to prevent medical errors. (col. 3, l. 55- col. 4, l. 9)

ANALYSIS

We affirm the rejection of claims 1-51.

Appellants' arguments against the rejection of each of the independent claims on appeal are based on perceived deficiencies of Engelson and Lambert. Inasmuch as Appellants raise the same issues with respect to each of these claims, we discuss them together, addressing each of Appellants' arguments in turn.

Appellants argue that "Engelson's discrepancy checking is less effective as it only provides a determination of whether the medication is indicated in the patient's medication administration record." (Appeal Br. 11) We disagree with Appellants because while Engelson discloses determining a condition for a corresponding compliance rule, *viz.* detecting a discrepancy between the barcoded information printed on the patient bracelet 170 and the barcoded information on the label 180 affixed to the medication container 185, it discloses more. Specifically, Engelson discloses that if the discrepancy is found then an alert is sounded and appropriate information, e.g., a comment, is displayed on the video display 84 attached to the bedside CPU 80 (FF2). Thus, we find that Engelson meets the claim limitations of: *wherein the first compliance rule includes a first condition and one or more first medication administration comments specific to the selected medication and the first condition… determining that the first condition for the first compliance rule has been satisfied.*

The Examiner, in recognizing that the claim requires a second compliance rule which includes a second condition and one or more second medication administration comments specific to the selected medication and the second

condition, relies on Lambert for this feature. (FF3) Specifically, Lambert discloses using a drug name as the first rule and product attributes as a second rule to prevent medical errors. (FF4) We therefore find with the Examiner that a person with ordinary skill in the art would know to use a second rule, such as the product attributes of Lambert, in the method of Engelson so that if a condition, such as two like-looking pills are at risk of being dispensed, then to display a comment/appropriate information on the video display 84 attached to the bedside CPU 80 of Engelson.

CONCLUSIONS OF LAW

We conclude the Appellants have not shown that the Examiner erred in rejecting claims 1-51 under 35 U.S.C. § 103(a) as being unpatentable over Engelson in view of Lambert.

DECISION

The decision of the Examiner to reject claims 1-51 is AFFIRMED.

JRG

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